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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,979	10/01/2003	Charles Alan Ludwig	MS1-1708US	7717

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EXAMINER	
WENDMAGEGN, GIRUMSEW	
ART UNIT	PAPER NUMBER
2621	

NOTIFICATION DATE	DELIVERY MODE
08/03/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

lhptoms@leehayes.com

Office Action Summary	Application No.	Applicant(s)	
	10/676,979	LUDWIG ET AL.	
	Examiner	Art Unit	
	GIRUMSEW WENDMAGEGN	2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 February 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6-10,12-21,23-28,30 and 32-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *30* is/are allowed.

6)☒ Claim(s) *1-4,6-10,12-21,23,25-27 and 32* is/are rejected.

7)☒ Claim(s) *24,28 and 33-35* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *5/27/2010*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 2/12/2010 have been fully considered but they are not persuasive.

On page15, applicant argues that the specification makes a distinction between computer-readable storage media and communication media. However examiner respectfully disagrees. The specification does not make a clear distinction between what is meant by a storage medium and propagation medium. On page20 and 21 " a 'processor-readable medium,' as used herein, can be any means that can contain, store, communicate, propagate, or transport instructions for use by or execution by a processor." recites "store" and "propogate" individually, it does not create a distinction. For example, a single medium could "contain", "store" and "transport" data, so the categories are clearly not mutually exclusive.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim1-4, 6-10, 12-21 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

After close inspection, the Examiner respectfully notes that the disclosure, as a whole, does not specifically identify what may be included as a computer readable storage medium and **what is not to be included as a computer readable storage**

medium. The broadest reasonable interpretation of a claim drawn to a computer readable medium (also called machine readable medium and other such variations) typically covers forms of non-transitory tangible media and transitory propagating signals *per se* in view of the ordinary and customary meaning of computer readable media, particularly when the specification is silent. See MPEP 2111.01. When the broadest reasonable interpretation of a claim covers a signal, *per* se, the claim must be rejected under 35 U.S.C. § 101 as covering non-statutory subject matter. Therefore, given the silence of the disclosure and the broadest reasonable interpretation, the computer readable storage medium of the claim may include transitory propagating signals. As a result, the claim pertains to non-statutory subject matter. However, the Examiner respectfully submits a claim drawn to such a computer readable medium that covers both transitory and non-transitory embodiments may be amended to narrow the claim to cover only statutory embodiments to avoid a rejection under 35 U.S.C. § 101 by adding the limitation "non-transitory" to the claim. Such an amendment would typically not raise the issue of new matter, even when the specification is silent because the broadest reasonable interpretation relies on the ordinary and customary meaning that includes signals *per se*. For additional information, please see the Patents' Official Gazette notice published February 23, 2010 (1351 OG 212).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim1,2,6,12, 25-27,32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller et al (Pub No US 2005/0033760) and Robinett et al (Pub No US 2002/0131443).

Regarding claim1,12, 25, 32 , Fuller et al (hereinafter Fuller) teaches a processor-readable medium comprising processor-executable instructions configured for: receiving an instruction specifying additional per-frame DV metadata to extract from a DV data stream; and extracting the metadata from a DV frame of the DV data stream in response to the instruction (see abstract, paragraph 0027) but does not teach determining DVPackID from extraction list; and identifying the metadata within the DV frame based on the DVPackID. However, Robinett et al teaches determining DVPackID from extraction list (see fig.3 element 402 and 404; Paragraph 0021, PIDs(packet identifier)); and identifying the metadata within the DV frame based on the DVPackID (see paragraph 0021, metadata can be broadly interpreted to be the extracted PCRs).

One of ordinary skill in the art at the time the invention was made would have been motivated to identify metadata based on PID as in Robinett because it would allow the system to extract the correct PCRs related to the program.

Regarding claim2, 26, Fuller teaches the one or more computer-readable storage media as recited in claim 1, further comprising processor- executable instructions

configured for: storing the metadata in a container; and attaching the container to a video sample of the DV frame (see abstract, paragraph 0027).

Regarding claim6, 27, Fuller teaches the one or more computer-readable storage media as recited in claim 2, further comprising processor- executable instructions configured for managing the container (see abstract, paragraph 0027).

Claim10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller et al (Pub No US 2005/0033760) and Robinett et al (Pub No US 2002/0131443) as applied to claim above, further in view of Wang (patent No US 6,516,029).

Regarding claim10, see the teaching of Fuller and Robinett above. Both do not teach demultiplexing the DV frame to generate the video sample and an audio sample. However, Wang teaches demultiplexing the DV frame to generate the video sample and an audio sample (see fig.4 DEMUX; column5 line53-58).

One of ordinary skill in the art at the time the invention was made would have been motivated demultiplex the DV data as in Wang because it would allow the system further process the content in separate state.

Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, absent unexpected results to the contrary.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim23 rejected under 35 U.S.C. 102(e) as being anticipated by Fuller et al (Pub No US 2005/0033760).

Regarding claim23, Fuller et al anticipates a method comprising: receiving an instruction to extract DV metadata from a DV data stream; extracting the metadata from the DV data stream in response to the instruction; storing the metadata in a container (see abstract, paragraph 0027); and attaching the container to a video sample of the DV data stream (see abstract, paragraph 0027).

Allowable Subject Matter

Claim 30 is allowed.

Claim 24, 28, 33-35 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 13-21,19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and overcome 35 U.S.C. § 101 rejection.

Claim3-4, 7-9, is allowable if applicant overcome 35 U.S.C. § 101 rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GIRUMSEW WENDMAGEGN whose telephone number is (571)270-1118. The examiner can normally be reached on 7:30-5:00, M-F, alr Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tran Thai can be reached on (571)272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Girumsew Wendmagegn/
Examiner, Art Unit 2621

/Thai Tran/

Supervisory Patent Examiner, Art Unit 2621